

#### REMARKS/ARGUMENTS

In response to the Office Action dated December 5, 2003, Applicants respectfully request reconsideration based on the above claim amendment and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 1-24 are pending in this application, of which claims 1, 8, 16, and 24 are amended. Claims 1, 6-16, 18, 19, and 21-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,761,602 (“Wagner”). Claims 1, 6-11, 19, and 22-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,852,721 (“Dillon”). Claims 1, 10, 11, 16, 19, and 22-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 6,118,472 (“Dureau”). Claims 1, 16, and 19 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 6,016,307 (“Kaplan”). Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of U.S. Patent No. 6,195,692 (“Hsu”). Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of “Routing in the Internet” (“Huitema”).

#### *Interview Summary*

Applicants’ attorney Kenneth R. Eiferman and the Examiner discussed previous claim 8 (now amended and partially incorporated into claims 1, 16, 19) of the present application in relation to the cited references in a telephonic interview on February 6, 2004. The following is Applicants’ understanding of the substance of the interview:

1. Mr. Eiferman and the Examiner discussed the three limitations of previous claim 8, namely geographic location, requested viewing time, and dollar amount willing to be paid. With respect to the geographic location and dollar amount, the Examiner maintained his assertion that the limitations were taught by the cited prior art. With respect to requested viewing time, the Examiner did not concede that the limitation was not taught by the cited prior, but the Examiner agreed to review the cited references to determine whether this limitation was taught in the cited references.

***Rejections Under 35 U.S.C. § 102(b)***

Claims 1, 6-16, 18, 19, and 21-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,761,602 (“Wagner”). Claims 1, 6-11, 19, and 22-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,852,721 (“Dillon”). Claims 1, 10, 11, 16, 19, and 22-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 6,118,472 (“Dureau”). Claims 1, 16, and 19 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 6,016,307 (“Kaplan”). Applicants respectfully disagree.

**The Claimed Invention**

The present application discloses systems and methods for content transmission network selection. More specifically there is disclosed:

“[Transmission] requests are transmitted over a broadband network, a back channel to a broadcast network, or both to a transmission network selector. The transmission network selector determines whether the content will be transmitted over a broadcast network or a broadband network. This determination is based on the information provided with the transmission request, information about the content itself, and information about the broadcast and broadband networks.” (Application, Summary of the invention).

In accordance with the disclosure, claim 1, which is representative of the other independent claims, is directed to a “method for content transmission network selection.” The claimed method comprises the following steps:

“identifying content to be transmitted based on at least one transmission request;

**determining whether to transmit the content using a broadcast network or a broadband network based upon characteristics of the transmission request comprising future a time at which the content is requested to be viewed; and**

transmitting the content on one of the broadcast network or broadband network.”

In order for a reference to anticipate this claim, the reference must teach the combination of all of the claimed elements, including those emphasized. Applicants' undersigned attorney respectfully submits that the cited reference does not.

The Cited References Do Not Teach the Claimed Invention

Previous claim 8 (now amended and partially incorporated into claims 1, 16, 19) recites determining a transmission network based upon at least one of three characteristics: geographic location, requested viewing time, and dollar amount willing to be paid. The limitation of determining a transmission network based upon a future requested future time has been incorporated into independent claims 1, 16, and 19.

In the Office Action, the Examiner asserts that the cited 102(b) references teach determining a transmission network based upon geographic location and dollar amount willing to be paid. The Examiner does not assert in the Office Action that the cited 102(b) references teach determining a transmission network based upon a future requested viewing time.

Although not mentioned in the Office Action, the Examiner asserted during the aforementioned interview that the limitation of determining a transmission network based upon a future requested viewing time is taught by Kaplan. The Examiner did not state where in Kaplan such teaching may be found. Applicants have reviewed Kaplan in detail and are unable to find any teaching or suggestion of determining a transmission network based upon a future requested viewing time. In fact Kaplan specifically lists parameters for performing an optimization that include cost, speed, reliability, and security (Kaplan, Col. 5, ln. 10). A future requested viewing time is notably absent from this list.

Kaplan mentions that time may be a factor in the determination of cost (Kaplan, Col. 5, ln. 27-30). However, using time as a factor in the determination of cost is entirely different from a future requested viewing time parameter. For example, a client may request a future viewing time at which transmission is much more expensive than at the present time.

Wagner mentions that a transmission network may be selected based upon an average client waiting time (i.e. network latency). Applicants respectfully submit that client waiting time is not at all similar to a future requested viewing time. Client waiting time is the time which a client must wait to receive content that is transmitted over a network. A client may

often request to view content at a future time that is later than the client waiting time. In such cases, the content may be delivered to the client at the future requested viewing time, thereby preserving current available bandwidth on the network. Thus, Applicants submit that independent claims 1, 16, and 19 are patentable over the cited prior art.

Applicants respectfully submit that dependent claims 6-13, 18, and 21-24 are patentable at least by reason of their dependency. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections are respectfully requested.

***Rejections Under 35 U.S.C. § 103(a)***

Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of U.S. Patent No. 6,195,692 (“Hsu”). Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of “Routing in the Internet” (“Huitema”). Applicants respectfully disagree.

With respect to previous claim 8 (now amended and partially incorporated into claims 1, 16, 19), the Examiner asserts that Huitema teaches determining a transmission network based upon a dollar amount the viewer is willing to pay for the content (Office Action, Page 10). The Examiner does not assert in the Office Action that Huitema teaches determining a transmission network based upon a future requested viewing time. Furthermore, Applicants have reviewed Huitema in detail and are unable to find any teaching or suggestion of determining a transmission network based upon a future requested viewing time. Thus, Applicants submit that independent claims 1, 16, and 19 are patentable over the cited prior art.

Applicants respectfully submit that dependent claims 2-5, 17, and 20 are patentable at least by reason of their dependency. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections are respectfully requested.

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PATENT  
REPLY FILED UNDER EXPEDITED  
PROCEDURE PURSUANT TO  
37 CFR § 1.116

**CONCLUSION**

In view of the above remarks, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested.

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